

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WAYNE BERRY,  
Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY  
AMERICAS (f.a. BANKERS TRUST COMPANY)  
and JP MORGAN CHASE BANK, in their separate  
capacities and as agents for the pre- and post-petition  
lenders of Fleming Companies, Inc.; GENERAL  
ELECTRIC CAPITAL CORPORATION; C&S  
WHOLESALE GROCERS, INC.; THE POST-  
CONFIRMATION TRUST OF FLEMING  
COMPANIES, INC.; ROBERT KORS; CORE-MARK  
HOLDINGS INC. and DOES 1 to 200.

x  
: 01:07 CV 7634 WHP  
: Judge William H. Pauley III  
: ECF Case  
  
: DECLARATION OF TIMOTHY  
: J. HOGAN IN SUPPORT OF  
: PLAINTIFF WAYNE BERRY'S  
: REQUEST FOR JUDICIAL  
: NOTICE IN SUPPORT OF HIS  
: MEMORANDA IN  
: OPPOSITION TO PLAINTIFF  
: WAYNE BERRY'S  
: MEMORANDUM IN  
: OPPOSITION TO DEUTSCHE  
: BANK TRUST COMPANY  
: AMERICAS and JP MORGAN  
: CHASE BANKS MOTION TO  
: DISMISS SECOND AMENDED  
: COMPLAINT AND JURY  
: DEMAND; EXHIBITS "1"  
: TO "6"  
:  
x

Defendants.

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DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF PLAINTIFF WAYNE  
BERRY'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HIS MEMORANDA IN  
OPPOSITION TO PLAINTIFF WAYNE BERRY'S MEMORANDUM IN OPPOSITION TO  
DEUTSCHE BANK TRUST COMPANY AMERICAS and JP MORGAN CHASE BANKS  
MOTION TO DISMISS SECOND AMENDED COMPLAINT AND JURY DEMAND;  
EXHIBITS "1" TO "6"

TIMOTHY J. HOGAN (Hawaii Bar No. 5312)  
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## DECLARATION OF TIMOTHY J. HOGAN

I, Timothy J. Hogan, an am attorney licensed to practice before all the courts of the state of Hawaii and am admitted to practice before this court, pro hac vice, and hereby declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so. Mr. Berry respectfully requests that the Court take notice of the materials submitted in support of Mr. Berry's Memorandum in Opposition.

1. Attached hereto as Exhibit "1" is a true and correct copy of the Second Amended Complaint ("SAC") filed herein on December 21, 2007 as Docket Number 26. Exhibits are intentionally omitted.
2. Attached hereto as Exhibit "2" is a true and correct copy of the Transcript of Proceedings dated March 2, 2006, in *Wayne Berry v. Hawaiian Express Service, Inc.*, CV 03-00385 SOM-LEK, (D. Hawaii).
3. Attached hereto as Exhibit "3" is a true and correct copy a tolling agreement between Mr. Berry and the Fleming Lenders.
4. Attached hereto as Exhibit "4" is true and correct copy of an excerpt of the Transcript of Proceedings in *In re Fleming Companies, Inc.*, Bk. No. 03-10945(MFW)(Bankr. De.) Regarding the Fleming Bankruptcy Plan Confirmation Hearing in the United States Bankruptcy Court for the District of Delaware, on July 24, 2004. This exhibit was extracted from a copy earlier filed by the Defendant Lenders attached to the Declaration of Erin Brady.
5. Attached hereto as Exhibit "5" is a true and correct copy an excerpt from the Fleming Companies, Inc. Plan Confirmation order in *In re Fleming Companies, Inc.*, Bk. No.

03-10945(MFW) (Bankr. Del.) filed on July 25, 2004. This excerpt was derived from a copy that had earlier been filed by the Defendant Lenders, attached to the Declaration of Erin Brady as Exhibit "R."

6. Attached hereto as Exhibit "6" is a true and correct copy of the Joint Motion of Fleming Companies, Inc. and the Pre-Petition Agents for Authorization Pursuant to Sections 363 and 105 of the Bankruptcy Code, to Pay Amounts to the Pre-Petition Agents on Behalf of the Pre-Petition Lenders, filed on October 10, 2003, in *In re Fleming Companies, Inc.*, Bk. No. 03-10945(MFW) (Bankr. Del.) as Docket Number 4011.

7. I represented Mr. Berry in the Fleming Companies, Inc. Bankruptcy in Delaware, and based on my personal knowledge, Mr. Berry did not vote to accept or reject any plan of reorganization in the Fleming Bankruptcy.

Executed at Honolulu, Hawaii, February 25, 2008.

/S/Timothy J. Hogan  
TIMOTHY J. HOGAN